STATE OF NEW YORK
UNEMPLOYMENT INSURANCE APPEAL BOARD
PO Box 15126
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DECISION OF THE BOARD

Mailed and Filed: OCTOBER 14, 2022

IN THE MATTER OF:
Appeal Board No. 624466

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits, effective June 21, 2021. The employer requested a hearing and objected contending that the claimant should be disqualified from receiving benefits because the claimant voluntarily separated from employment without good cause.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances by the claimant and on behalf of the employer. By decision filed June 2, 2022 (), the Administrative Law Judge granted the employer's application to reopen A.L.J. Case Nos. 021-48471 and 021-36272 and sustained, effective June 21, 2021, the employer's objection and overruled the initial determination.

The claimant appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statement submitted on behalf of the employer.

We have reviewed the entire record and have considered the testimony and other evidence. It appears that no errors of fact or law have been made insofar as they concern the issue of the employer's application to reopen A.L.J. Case Nos. 021-48471 and 021-36272. The findings of fact and the opinion of the Administrative Law Judge, insofar as they concern the issue of the employer's application to reopen A.L.J. Case Nos. 021-48471 and 021-36272, only, are fully supported by the record and, therefore, are adopted as the findings of fact and opinion of the Board.

As to the issue of the employer's objection that the claimant voluntarily separated from employment without good cause, the Board makes the following

FINDINGS OF FACT: The claimant worked from approximately February 4, 2021 through June 22, 2021 as an associate at a tanning salon. The claimant and owner met in late January through a "sugar daddy" website, in which men and women meet with the understanding that the woman will provide the man with "no-strings-attached" companionship and the man will provide the woman with money. The salon owner paid the claimant for sex on several occasions during the course of her employment, and he told her that their personal relationship would not affect their work relationship.

The owner does not permit staff to have romantic relationships with customers. During her employment, the owner questioned how the claimant could afford her lifestyle on her earnings from the tanning salon. On June 15, 2021, the owner asked the claimant to show him her phone and prove that she did not have a particular male customer's phone number. The claimant had the customer's number in her phone and refused to show him her phone.

On June 21, 2021, the claimant and one of her friends met the owner and two of his friends at the beach to celebrate the owner's birthday. The claimant made a sexual overture toward one of the owner's friends when the owner was not present.

On June 22, 2021, the owner called the tanning salon and spoke with the claimant about the salon for a few minutes. He then told the claimant that her sexual advance toward his friend was inappropriate. The claimant became upset and resigned her employment because she believed she was being sexually harassed by the owner.

OPINION: The credible evidence establishes that the claimant quit her job as a tanning salon associate after the owner confronted her at work about a sexual overture she made toward his friend while off duty. The owner had already demanded that the claimant show him her phone to prove that she did not have a particular customer's phone number and questioned how she was able to support her lifestyle on her earnings from the salon. Although the owner testified that he kept his personal relationship with the claimant separate from his professional relationship with her, these events all occurred while the claimant was at work. Regardless of whether the claimant's job was in

jeopardy, once the owner effectively demanded sexual fidelity-or any standard of off-duty sexual conduct or restraint-in conversations with the claimant while she was working, he altered the conditions of the claimant's employment and engaged in unlawful sexual harassment (see Harris v Forklift Systems, 510 U.S. 17 [1993]). Therefore, the claimant had good cause to quit. Accordingly, we conclude that the claimant's separation occurred under non-disqualifying circumstances, and the claimant is allowed benefits.

DECISION: The decision of the Administrative Law Judge is modified as follows and, as so modified, is affirmed.

The employer's application to reopen A.L.J. Case Nos. 021-48471 and 021-36272 is granted.

The employer's objection, that the claimant should be disqualified from receiving benefits because the claimant voluntarily separated from employment without good cause, is overruled.

The initial determination, holding the claimant eligible to receive benefits, effective June 21, 2021, is sustained.

The claimant is allowed benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER